

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Schools and Libraries Universal Service  
Support Mechanism

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) CC Docket No. 02-6  
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**AT&T COMMENTS ON PETITION FOR RECONSIDERATION**

Pursuant to the Commission's Public Notice, DA 05-103, released January 18, 2005, AT&T Corp. ("AT&T") submits these comments in support of the petition filed on October 13, 2004 by Sprint Corporation and BellSouth Corporation (collectively "Petitioners") seeking reconsideration of Commission's *Fifth Report and Order*, FCC 04-190, released August 13, 2004 ("*Order*"), in the above-captioned proceeding.

In the *Order* (§ 24), the Commission held that all E-rate support funds disbursed under its universal service programs should be recovered if the school or library that is a beneficiary of the program failed to pay its non-discounted share within 90 days after delivery of service. As Petitioners (at 1) explain, the "E-rate program provides funding of between 20-90% of the charges for eligible services provided to eligible schools and libraries; the schools and libraries are required to pay the remaining non-discounted share of the bill." In the *Order*, the Commission ruled that an E-rate beneficiary will be deemed *not* to have paid if it has failed to pay its non-discounted share within 90 days after delivery of service.

AT&T fully agrees with the Commission that E-rate beneficiaries should be required to pay for services in a timely manner. However, the rule, as adopted by the Commission, has several serious flaws that require it be reconsidered.

*First*, as Petitioners point out (at 2-3), the Commission adopted the rule without notice and comment as to the timeframe when a presumption should arise that an E-rate beneficiary has failed to pay the non-discounted share for the service that it has received. Although the Commission contends that the Administrative Procedures Act (APA) does not require notice and comment because the *Order* adopts only “non-substantive technical changes” (*Order* n.120), the fact is that the rule has far-reaching, punitive consequences that cannot be pigeonholed into this “procedural” exemption. Moreover, the Commission does not cite any support in the record for its selection of a 90-day timeframe as indicative of nonpayment, which itself renders the rule arbitrary and capricious.

*Second*, if the applicant has not paid its portion within 90 days after service delivery and USAC recoups the disbursed funds, it will inevitably impose a harsh and unwarranted burden on the service provider. For example, if the school was funded at 90% and the 90% has been disbursed and, if for some reason, the school cannot pay the 10% within the stated time period, this would allow USAC to reclaim the 90% (because the applicant violated the rules). The service provider would then be left to try collect 100% from an entity that has not paid even 10%. Clearly, this process could have highly detrimental consequences for a service provider that has rendered service to an eligible beneficiary, even if that beneficiary did not pay its portion of the bill as promptly as it should have.

Not only would recoupment of disbursed funds mean that the carrier would have provided service, incurred program costs (including competitive bidding, installation, service deployment, and higher bill processing costs associated with participation in the schools and libraries program, *etc.*), but it would then incur additional costs to reverse the credit and initiate collection activities. The harsh impact of the rules is inconsistent with the fact that it is the service provider – not the E-rate beneficiary – that is out the money, and that it is the E-rate beneficiary – not the service provider – that has defaulted in its duty of prompt payment. This itself makes the rule arbitrary and capricious. Accordingly, AT&T believes that there should be no recoupment of funds for service rendered, even if the E-rate beneficiary does not pay its bill within 90 days.

More importantly, USAC is permitted to give heightened scrutiny to subsequent applications from program beneficiaries that have been found to have violated the statute or rules in the past. *Id.* ¶ 44. AT&T believes that this is the better course of action. Instead of punishing the service provider that has duly rendered service, and whose customer may be somewhat late in paying, USAC should use the fact of late payment in determining whether prospectively that beneficiary should be permitted to participate in the E-rate program. Under this approach, the service provider would have the option of withdrawing future service in lieu of undertaking expensive collection proceedings for 100% of rendered services. The threat of loss of future discounts should be an effective deterrent to the beneficiary's avoiding timely payment for service. Even here, however, there should be some consideration given to the specific circumstances, *e.g.*, the length of time that beneficiary failed to make payment, whether late payment was

an isolated incident or a recurrent practice, and any extenuating circumstances surrounding late payment.

Finally, another reason why the 90-day recoupment rule has deleterious effects on the service provider is that, once a debt is more than 90 days old, it is more difficult to take collection action. Given that the rule creates a presumption of nonpayment after 90 days, customers could contend that the rule bars carriers from seeking earlier collection activities, if they chose to do so.

For these reasons, and those stated by Petitioners, the Commission should eliminate the 90-day recoupment rule.

Respectfully submitted,

AT&T Corp.

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## **CERTIFICATE OF SERVICE**

I, Judy Sello, do hereby certify that on this 16th day of February, 2005, a copy of the foregoing "AT&T Comments on Petition for Reconsideration" was served by U.S. first class mail, postage prepaid, on the parties named below.

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